



In the Matter of:

ALLEN T. SHUTE,

ARB CASE NO. 97-060

COMPLAINANT,

ALJ CASE NO. 96-STA-19

v.

DATE: June 11, 1997

SILVER EAGLE COMPANY,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL DECISION AND ORDER

Before us for review is the Recommended Decision and Order (R. D. and O.) issued on February 13, 1997 by the Administrative Law Judge (ALJ) in this case arising under the employee protection provision of the Surface Transportation Assistance Act of 1982 (STAA), 49 U.S.C.A. § 31105. Complainant Allen T. Shute (Shute) alleges that Respondent Silver Eagle Company (Silver Eagle) violated the STAA by issuing a warning letter in January 1996 for his refusal to operate his vehicle and terminating him in April 1996 for leaving trailers containing hazardous materials unattended on an interstate off-ramp. Silver Eagle alleges that Shute was discharged for legitimate, nondiscriminatory reasons. The ALJ recommended that the complaint be dismissed.

A hearing was held before the ALJ on June 4, 1996, and all appropriate testimony and exhibits were received into evidence. R. D. and O. at 1. The findings of fact in the ALJ's R. D. and O. are supported by substantial evidence on the record as a whole and therefore are conclusive. 29 C.F.R. § 1978 (c)(3) (1983).

In discussing the burden of proof to be met by parties in STAA cases, R. D. and O. at 2, the ALJ indicates that an employer's burden is to *prove* a legitimate, non-discriminatory, non-pretextual reason for its action in order to rebut evidence raising a reasonable inference of retaliatory discharge. *Id.* However, if the evidence presented by the complainant raises a reasonable inference of retaliatory discharge, the employer need only *articulate* a non-discriminatory reason for its action. At all times, the complainant has the burden of establishing that the real reason for his discharge was discriminatory. *St. Mary's Honor Center v. Hicks*, 113 S.Ct. 2742 (1993).

In all other respects the ALJ's conclusions of law and fact are fully supported by the applicable law and the record evidence. Accordingly, the R. D. and O. is accepted (copy attached) and the complaint in this case is **DISMISSED**.

SO ORDERED.

DAVID A. O'BRIEN
Chair

KARL J. SANDSTROM
Member

JOYCE D. MILLER
Alternate Member